# IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 114 OF 2005

SHRI DATTA SAZO NAIK(DEC.) THROUGH L.RS. ....Appellant

Versus

SHRI RAMA LAXIMAN NAIK,PERNEM GOA ....Respondent

Shri Rohit Bras De Sa, Advocate for the Appellants.

Coram:- D. D. SINHA, J.

Date:- 24th November, 2005

P.C.:

Heard Shri R. Bras de Sa, the learned Advocate for the Appellants.

2. The appellants are the plaintiffs who have filed Regular Civil Suit No.178/79 for declaration and injunction which came to be dismissed by the trial Court. Being aggrieved by the decision of the trial Court, the appellants have preferred First Appeal which also came to be dismissed and hence this Second Appeal.

3. The following facts are not disputed :-

The appellants (plaintffs) had filed an earlier suit against the mother of the defendant No.1. The suit was dismissed by Judgment and Decree dated 15.4.87. Appeal was preferred against the judgment and decree. That appeal was dismissed on 28.4.89. The plaintiffs had preferred Second Appeal. This Court set aside the judgment and decree dated 15.4.87 and 28.4.89 and remanded the case back to the trial Court. Pursuant to the remand, the Civil Judge J.D. again dismissed the suit by Judgment dated 3.1.2000. It is held by the learned Judge in the said

judgment that the plaintiffs are not the owners of property bearing Survey No.268/16. The finding of the learned Civil Judge rendered in Judgment dated 3.1.2000 reached finality since there is no appeal preferred against the said judgment and therefore that is binding on the present appellants. Consequently, the declaration of title sought by the appellants in respect of Survey No.268/16 in view of the above referred finding in the earlier suit is rightly disallowed by both the courts. Similarly so far as survey No.268/17 is concerned, it is not in dispute that the plaintiffs in the earlier suit have admitted that the property bearing survey No.268/17 is part of 1/12th share of the property called " Gotke" which belonged to the mother of the defendant No.1 and others.

4. In view of the above referred admission, the declaration sought by the plaintiffs in respect of Survey No.268/17 is also rightly rejected by both the courts and therefore the findings are just and proper and need no interference in the light of the above referred facts. The questions of law referred by the appellants in the memo of appeal are not the substantial questions of law involved in the controversy in issue.

5. In the circumstances, the Second Appeal suffers from laches and the same is dismissed.

D. D. SINHA, J.

sl.